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DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-881, C-580-882]

Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Affirmative Final Determinations of Circumvention of the Antidumping Duty and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of certain cold-rolled steel flat products (CRS), produced in the Socialist Republic of Vietnam (Vietnam) using carbon hot-rolled steel (HRS) manufactured in the Republic of Korea (Korea), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on CRS from Korea.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold or Fred Baker, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1121 or (202) 482-2924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2019, Commerce published the *Preliminary Determinations*¹ of circumvention of the *CRS Orders*.² A summary of the events that occurred since Commerce published the *Preliminary Determinations*, as well as a full discussion of the issues raised by parties for these final determinations, may be found in the Issues and Decision Memorandum.³ The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and it is available to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Orders

The products covered by these orders are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. For a complete description of the scope of the orders, *see* the Issues and Decision Memorandum.

¹ *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Affirmative Preliminary Determination of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 84 FR 32875 (July 10, 2019) (*Preliminary Determinations*), and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum).

² *See Certain Cold-Rolled Steel Flat Products from Brazil, India, the Republic of Korea, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Brazil and the United Kingdom and Antidumping Duty Orders*, 81 FR 64432 (September 20, 2016); *see also Certain Cold-Rolled Steel Flat Products from Brazil, India, and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (the Republic of Korea) and Countervailing Duty Orders (Brazil and India)*, 81 FR 64436 (September 20, 2016) (collectively, *CRS Orders*).

³ *See* Memorandum, "Issues and Decision Memorandum for Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders on Certain Cold-Rolled Steel Flat Products from the Republic of Korea," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Scope of the Anti-Circumvention Inquiries

These anti-circumvention inquiries cover CRS produced in Vietnam using HRS substrate manufactured in Korea and subsequently exported from Vietnam to the United States (merchandise under consideration). These final rulings apply to all shipments of merchandise under consideration entered on or after the date of the initiation of these inquiries. Importers and exporters of CRS produced in Vietnam using HRS manufactured in Vietnam or third countries, and who qualify to participate in the certification process, must certify that the HRS processed into CRS in Vietnam did not originate in Korea, as provided for in the certifications attached to this *Federal Register* notice. Otherwise, their merchandise may be subject to antidumping and countervailing duties.

Methodology

Commerce is conducting these anti-circumvention inquiries in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act). Because Vietnam is a non-market economy country within the meaning of section 771(18) of the Act, Commerce calculated the value of certain processing and merchandise using factors of production and market economy values, as discussed in section 773(c) of the Act.⁴ See Preliminary Decision Memorandum for a full description of the methodology. We have continued to apply this methodology for our final determination.

⁴ See, e.g., *Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review*, 81 FR 71071 (October 14, 2016) and accompanying Preliminary Decision Memorandum at 3, unchanged in *Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2014–2015*, 82 FR 18611 (April 20, 2017).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in these inquiries are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as Appendix I.

Final Affirmative Determinations of Circumvention

We determine that exports to the United States of CRS produced in Vietnam from HRS substrate manufactured in Korea are circumventing the *CRS Orders*. We therefore find it appropriate to determine that this merchandise falls within the *CRS Orders*, and to instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of any entries of CRS from Vietnam produced using HRS substrate manufactured in Korea.

Continuation of Suspension of Liquidation

As stated above, Commerce has made an affirmative determination of circumvention of the *CRS Orders* by exports to the United States of CRS produced in Vietnam using Korean-origin HRS substrate. This circumvention finding applies to CRS produced by any Vietnamese company using Korean-origin HRS substrate. In accordance with 19 CFR 351.225(l)(3), Commerce will direct CBP to continue to suspend liquidation and to require a cash deposit of estimated duties on unliquidated entries of CRS produced in Vietnam using Korean-origin HRS substrate that were entered, or withdrawn from warehouse, for consumption on or after August 2, 2018, the date of initiation of these anti-circumvention inquiries.⁵

The suspension of liquidation and cash deposit instructions will remain in effect until further notice. In order to prevent evasion, and because the AD and CVD rates established in the *CRS China Circumvention Final* are higher than the rates established for CRS from Korea,

⁵ See *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 83 FR 37790 (August 2, 2018).

Commerce will instruct CBP to suspend liquidation and collect cash deposits in the following manner.⁶ In the situation where no certification regarding the origin of the substrate is maintained for an entry, and AD/CVD orders from two countries (China or Korea) potentially apply to that entry, Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the AD rate established for the China-wide entity (199.76 percent) and the China CVD all-others rate (256.44 percent), pursuant to the *CRS China Circumvention Final*. In the situation where a certification is maintained for the AD/CVD orders on CRS from China (stating that the merchandise was not produced from HRS from China), but no other certification is maintained, Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the AD and CVD all-others rates (*i.e.*, 20.33 percent and 3.89 percent, respectively) applicable to the AD/CVD orders on CRS from Korea.⁷

CRS produced in Vietnam from HRS substrate that is not of Korean-origin is not subject to these inquiries. Therefore, cash deposits are not required for such merchandise. However, CRS produced in Vietnam from HRS from China is subject to the AD/CVD orders on CRS from China. If an importer imports CRS from Vietnam and claims that the CRS was produced from non-Korean HRS substrate, in order not to be subject to cash deposit requirements, the importer and exporter are required to meet the certification and documentation requirements described in Appendix II. Exporters of CRS produced in Vietnam from non-Korean origin HRS substrate must prepare and maintain an Exporter Certification and documentation supporting the Exporter Certification (*see* Appendix IV). In addition, importers of such CRS must prepare and maintain an Importer Certification (*see* Appendix III) as well as documentation supporting the Importer

⁶ See *Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 83 FR 23891 (May 23, 2018) (*CRS China Circumvention Final*).

⁷ See *CRS Orders*.

Certification. In addition to the Importer Certification, the importer must also maintain a copy of the Exporter Certification (*see* Appendix IV) and relevant supporting documentation from its exporter of CRS produced from non-Korean-origin HRS substrate.

For these final determinations, we determine that the following companies are not eligible for the certification process: 190 Steel Pipe Co. Ltd., Central Vietnam Metal Corp., Hoa Phat Steel Pipe Co., POSCO E&C, POSCO SS Vina, POSCO VST, VSC – POSCO Steel Corporation, Prima Commodities Co., Southern Steel Sheet Co., Ltd., Tan Thanh Quyen Steel Co., Thai Nguyen Iron and Steel Corp., Thong Nhat Flat Steel, Van Loi Co. Ltd., Vietnam Germany Steel JSC, Vietnam Steel Corp., Vietnam Steel Pipe, Vina Kyoei Steel Ltd., Vinda Iron & Steel Co. Ltd., and VNSTEEL – Phu My Flat Steel Co. Accordingly, importers of CRS from Vietnam that is produced and/or exported by these ineligible companies are similarly ineligible for the certification process with regard to those imports. Additionally, exporters are not eligible to certify shipments of merchandise produced by the above-listed companies. Accordingly, Hoa Phat Group Joint Stock Company and Hoa Phat Steel Sheet are not eligible to certify shipments of CRS produced by Hoa Phat Steel Pipe Co.⁸

Notification Regarding Administrative Protective Orders

This notice will serve as the only reminder to all parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

⁸ *See* Issues and Decision Memorandum at Comment 11.

Notification to Interested Parties

These determinations are issued and published in accordance with section 781(b) of the Act and 19 CFR 351.225(f).

Dated: December 13, 2019.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

- I. SUMMARY
- II. BACKGROUND
- III. SCOPE OF THE ORDERS
- IV. SCOPE OF THE ANTI-CIRCUMVENTION INQUIRIES
- V. CHANGES SINCE THE PRELIMINARY DETERMINATION
- VI. STATUTORY FRAMEWORK
- VII. STATUTORY ANALYSIS
- VIII. DISCUSSION OF THE ISSUES

- Comment 1: Whether Companies That Did Not Receive Commerce's Quantity and Value (Q&V) Questionnaire Should Be Permitted to Participate in the Certification Process.
- Comment 2: Whether Commerce Abused Its Discretion in Rejecting the Q&V Questionnaire Responses of Certain Companies
- Comment 3: Whether Commerce Should Not Apply AFA to SSSC
- Comment 4: Whether Commerce Lacks Statutory Authority to Apply AFA Where Respondents Did Not Deprive Commerce of Information Regarding Its Ability to Trace Inputs.
- Comment 5: Whether Commerce's Use of AFA Impermissibly Departs Without Explanation from Its Decision in the China Anti-Circumvention Inquiry
- Comment 6: Whether Precluding Certain Importers and Exporters from Participating in the Certification Process is Inappropriate and Unfairly Punishes Importers
- Comment 7: Whether Commerce Should Allow Additional Time for Completing Certifications for Pre-Preliminary Determination Entries
- Comment 8: Whether a Country-Wide Determination is Justified
- Comment 9: Whether Commerce's Interpretation of Section 781(b) of the Act Applies to the CRS Production Process in Vietnam and Expands the Scope of the Orders
- Comment 10: Whether Commerce Should Amend the Exporter Certification Language to Prevent Funneling
- Comment 11: Whether to Apply AFA to Certain Vietnamese Producers That Are Affiliated with Those That Are Deemed Non-Responsive
- Comment 12: Whether Commerce Should Preclude Companies that Failed to Cooperate in Both the CRS from China and CRS from Korea Inquiries from Participating in the Certification Regime
- Comment 13: Whether to Apply the Highest of the Petition Rate or Investigation Calculated Rate as the Cash Deposit Rate for Non-Responsive Companies
- Comment 14: Whether POSCO Vietnam's History Demonstrates that It Cannot Be Viewed as Circumventing
- Comment 15: Whether POSCO Vietnam's Operations Confirm that the Process of Assembly or Completion Is Not Minor or Insignificant
- Comment 16: Analysis of Patterns of Trade

- Comment 17: Whether the Value Added in Vietnam Is Significant
- Comment 18: Whether Commerce Should Rely on AFA to Value POSCO Vietnam's Scrap Offset
- Comment 19: Whether Commerce Should Account for POSCO Vietnam's Failure to Disclose Corporate Affiliations in Its Final Determination

IX. RECOMMENDATION

APPENDIX II

Certification Requirements

If an importer imports certain cold-rolled steel flat products (CRS) from the Socialist Republic of Vietnam (Vietnam) and claims that the CRS was not produced from hot-rolled steel substrate (substrate) manufactured in Korea, the importer is required to complete and maintain the importer certification attached hereto as Appendix III and all supporting documentation. Where the importer uses a broker to facilitate the entry process, it should obtain the entry number from the broker. Agents of the importer, such as brokers, however, are not permitted to make this certification on behalf of the importer.

The exporter is required to complete and maintain the exporter certification, attached as Appendix IV, and is further required to provide the importer a copy of that certification and all supporting documentation.

As discussed in the Issues and Decisions Memorandum, for these final determinations, we are extending the period for completing certifications for shipments and/or entries during the August 2, 2018 through July 18, 2019 period established in the *Preliminary Determinations*. Accordingly, for shipments and/or entries on or after August 2, 2018 through July 18, 2019 for which certifications are required, importers and exporters should complete the required certification within 30 days of the publication of these final determinations notice in the *Federal Register*.

For companies that were not eligible to certify pursuant to the *Preliminary Determinations*, but are now eligible pursuant to the final determinations, we are also extending the period for completion of their certifications for shipments and/or entries from August 2, 2018

through the date of *Federal Register* publication of the final determinations until 30 days after publication of these determinations.

Accordingly, where appropriate, the relevant bullet in the certification should be edited to reflect that the certification was completed within the time frame specified above. For example, the bullet in the importer certification that reads: “This certification was completed at or prior to the time of Entry,” could be edited as follows: “The imports referenced herein entered before July 19, 2019. This certification was completed on mm/dd/yyyy, within 30 days of the *Federal Register* notice publication of the final determinations of circumvention.” Similarly, the bullet in the exporter certification that reads, “This certification was completed at or prior to the time of shipment,” could be edited as follows: “The shipments/products referenced herein shipped before July 19, 2019. This certification was completed on mm/dd/yyyy, within 30 days of the *Federal Register* notice publication of the final determinations of circumvention.” For such entries/shipments, importers and exporters each have the option to complete a blanket certification covering multiple entries/shipments, individual certifications for each entry/shipment, or a combination thereof.

For shipments and/or entries on or after the date of publication of this notice in the *Federal Register*, for which certifications are required, importers should complete the required certification at or prior to the date of Entry and exporters should complete the required certification and provide it to the importer at or prior to the date of shipment.

For shipments and/or entries made on or after 10 days after the date of publication of these final determinations, parties should use the exporter and importer certifications contained below that incorporate additional information that was not in the preliminary determinations certifications. Specifically, the exporter certification now requires identification of the producer

of the merchandise being exported to the United States, and also notes that CVD deposits may be required in addition to AD deposits as a result of the failure to maintain the required certification or the inability to substantiate the claims made in the certification. Similarly, the importer certification also notes that CVD deposits may be required in addition to AD deposits as a result of the failure to maintain the required certification or the inability to substantiate the claims made in the certification. The importer and Vietnamese exporter are also required to maintain sufficient documentation supporting their certifications. The importer will not be required to submit the certifications or supporting documentation to U.S. Customs and Border Protection (CBP) as part of the entry process at this time. However, the importer and the exporter will be required to present the certifications and supporting documentation, to Commerce and/or CBP, as applicable, upon request by the respective agency. Additionally, the claims made in the certifications and any supporting documentation are subject to verification by Commerce and/or CBP. The importer and exporter are required to maintain the certifications and supporting documentation for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.

In the situation where no certification is maintained for an entry, and AD/CVD orders from two countries (China or Korea) potentially apply to that entry, Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the *CRS China Circumvention Final* rates (*i.e.*, the AD rate established for the China-wide entity (199.76 percent) and the CVD rate established for China all-others rate (256.44 percent)).⁹ In the situation where a certification is maintained for the AD/CVD orders on CRS from China (stating that the merchandise was not produced from HRS from China), but no other certification is provided, then Commerce intends

⁹ See *CRS China Circumvention Final*.

to instruct CBP to suspend the entry and collect cash deposits at the AD and CVD all-others rates (*i.e.*, 20.33 percent and 3.89 percent, respectively) applicable to the AD/CVD orders on CRS from Korea.¹⁰

¹⁰ *See CRS Orders.*

Appendix III

IMPORTER CERTIFICATION

I hereby certify that:

- My name is {INSERT COMPANY OFFICIAL'S NAME HERE} and I am an official of {INSERT NAME OF IMPORTING COMPANY};
- I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the cold-rolled steel flat products produced in Vietnam that entered under entry number(s) {INSERT ENTRY NUMBER(S)} and are covered by this certification. "Direct personal knowledge" refers to facts the certifying party is expected to have in its own records. For example, the importer should have "direct personal knowledge" of the importation of the product (*e.g.*, the name of the exporter) in its records;
- I have personal knowledge of the facts regarding the production of the imported products covered by this certification. "Personal knowledge" includes facts obtained from another party, (*e.g.*, correspondence received by the importer (or exporter) from the producer regarding the source of the input used to produce the imported products);
- These cold-rolled steel flat products produced in Vietnam do not contain hot-rolled steel substrate produced in Korea;
- I understand that {INSERT NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, mill certificates, productions records, invoices, etc.) for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in the United States courts regarding such entries;
- I understand that {INSERT NAME OF IMPORTING COMPANY} is required to provide this certification and supporting records, upon request, to U.S. Customs and Border Protection (CBP) and/or the Department of Commerce (Commerce);
- I understand that {INSERT NAME OF IMPORTING COMPANY} is required to maintain a copy of the exporter's certification for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries;
- I understand that {INSERT NAME OF IMPORTING COMPANY} is required to maintain and provide a copy of the exporter's certification and supporting records, upon request, to CBP and/or Commerce;
- I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;
- I understand that failure to maintain the required certification and/or failure to substantiate the claims made herein will result in:
 - o suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met and

o the requirement that the importer post applicable antidumping/countervailing duty (AD and/or CVD) cash deposits equal to the rates as determined by Commerce;

- I understand that agents of the importer, such as brokers, are not permitted to make this certification;
- This certification was completed at or prior to the time of Entry; and
- I am aware that U.S. law (including, but not limited to, 18 U.S.C. §1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature

NAME OF COMPANY OFFICIAL

TITLE

DATE

Appendix IV

EXPORTER CERTIFICATION

I hereby certify that:

- My name is {INSERT COMPANY OFFICIAL’S NAME HERE} and I am an official of {INSERT NAME OF EXPORTING COMPANY};
- I have direct personal knowledge of the facts regarding the production and exportation of the cold-rolled steel flat products that were sold to the United States under invoice number(s) INSERT INVOICE NUMBER(S). “Direct personal knowledge” refers to facts the certifying party is expected to have in its own books and records. For example, an exporter should have “direct personal knowledge” of the producer's identity and location.
- The {MERCHANDISE} covered by this certification was produced by {NAME OF PRODUCING COMPANY}, located at {ADDRESS OF PRODUCING COMPANY}; *for each additional company, repeat: {NAME OF PRODUCING COMPANY}, located at {ADDRESS OF PRODUCING COMPANY}.*
- These cold-rolled steel flat products produced in Vietnam do not contain hot-rolled steel substrate produced in Korea:
- I understand that {INSERT NAME OF EXPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, mill certificates, productions records, invoices, etc.) for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in the United States courts regarding such entries;
- I understand that {INSERT NAME OF EXPORTING COMPANY} must provide this Exporter Certification to the U.S. importer by the time of shipment;
- I understand that {INSERT NAME OF EXPORTING COMPANY} is required to provide a copy of this certification and supporting records, upon request, to U.S. Customs and Border Protection (CBP) and/or the Department of Commerce (Commerce);
- I understand that the claims made herein, and the substantiating documentation are subject to verification by CBP and/or Commerce;
- I understand that failure to maintain the required certification and/or failure to substantiate the claims made herein will result in:
 - suspension of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met and
 - the requirement that the importer post applicable antidumping/countervailing duty (AD and/or CVD) cash deposits equal to the rates as determined by Commerce;
- This certification was completed at or prior to the time of shipment; and
- I am aware that U.S. law (including, but not limited to, 18 U.S.C. §1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature
NAME OF COMPANY OFFICIAL

TITLE

DATE
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